IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 3052 of 2001(L)
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PETITIONER:
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C.UNNIKRISHNAN, LAXMI APARTMENTS,
PETTA, PUNITHURA, ERNAKULAM DIST.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SMT.K.A.ANGEL TREENA

RESPONDENTS:
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1.THE SECRETARY, KERALA STATE ELECTRICITY
BOARD, VYDYUTHI BHAVAN, PATTOM, TRIVANDRUM.

2.THE DEPUTY CHIEF ENGINEER, (APTS)
VYDYUTHI BHAVAN, PATTOM, TRIVANDRUM.

3.ASST.EXECUTIVE ENGINEER, MAJOR SECTION, VYTTILA.

BY ADV. SRI.T.G.RAJENDRAN SC FOR K.S.E.B.
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO. 5052/01 IN O.P.NO.3052/01

DISMISSED

22.11.2007. SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE TAX ASSESSMENT NOTICE NO.64 DT. 30.7.1999 OF COCHIN CORPORATION.

EXT.P2 : TRUE COPY OF THE NOTICE NO.DB/APTS/98/DT/478/14.2.2001 ISSUED BY ASST.EXECUTIVE ENGINEER, VYTTILA.

EXT.P2A TRUE COPY OF THE INVOICE NO.076676 DT. 11.2.2000.

EXT.P3 : TRUE COPY OF THE NOITCE NO.DB/APTS/98/DT. 479/14.2.2000 ISSUED BY ASST.EXECUTIVE ENGINEER, VYTTILA.

EXT.P3A TRUE COPY OF THE INVOICE NO.079502 DT. 11.2.2000.

EXT.P4 : TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT. 18.2.2000.

EXT.P5 : TRUE COPY OF THE ORDER NO.VIG/APTS/BV-5467/99-2000/EKM DT. 21.2.2000.

EXT.P6 TRUE COPY OF THE ORDER NO.APTS-BV/5604/99-2000 DT. 15.1.2001 OF THE 2ND RESPONDENT.

EXT.P7 TRUE COPY OF THE GO (HT) NO.95/2000/FD DT. 13.4.2000 ISSUED BY ADDL.SECRETARY POWER (A) DEPT.

**KURIAN JOSEPH, J.**

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**O.P.NO. 3052 OF 2001**

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**Dated 22nd November, 2007.**

**J U D G M E N T**

The writ petition is filed mainly with the following prayers :-

> "(i) Issue a writ of mandamus, order or direction calling for the records leading to Ext.P6 order.
>
> (ii) Issue a writ of certiorari or other appropriate writ order or direction quashing Ext.P6 order."

As far as penalty for unauthorised connected load is concerned, it is now settled law in view of the Bench decision of this Court in W.A.1231/03 that the penalty has to be limited to the fixed charge portion. It is held that there shall not be any penalty by way of proportionate energy charges. The impugned demands are quashed making it clear that the liability of the petitioner shall only be for the penalty for fixed charge portion. As far as penalty for temporary extension is concerned, in view of the judgment of this court in **J.D.T.Islam Orphanage Committee v. Assistant Engineer, K.S.E.B.** (2007(3) KLT 388), the demand requires fresh consideration. There will be a direction to the competent authority to issue fresh demands in the light of the

observations contained in the said judgments, within three months from the date of production of a copy of the judgment. The interim order passed by this court in C.M.P.No.5052/01 will continue till such time. The revised demand shall be issued to the petitioner and the amounts already remitted by the petitioner shall be adjusted.

The writ petition is disposed of as above.

**KURIAN JOSEPH, JUDGE.**

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**KURIAN JOSEPH, J**

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**O.P.NO.3052 OF 2001**

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**J U D G M E N T**

**DATED 22nd November, 2007.**